

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

<b>DANIEL J. WIK,</b>  <b>Plaintiff,</b>  <b>-vs-</b>  <b>DONALD R. KUNEGO, in his personal and individual capacity,</b>  <b>Defendant.</b>	<b>AFFIRMATION OF COUNSEL</b>  <b>Index No.: 11 CV 6205 CJS</b>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------

ROBERT H. FLYNN, ESQ., affirms the following under penalty of perjury:

1. I am affiliated with the law firm known as LIPPMAN O'CONNOR, attorneys for the defendant DONALD KUNEGO.
2. This affirmation is submitted in opposition to the pro-se plaintiff's motion for subpoena/enlargement of depositions.
3. Opposition is made on the grounds that (1) the application is premature at this point, (2) plaintiff sets forth no basis for the relief requested, and (3) plaintiff does not identify why any of the proposed witnesses and/or subpoenas are necessary in the prosecution of this action.
4. This action arises out of the issuance of various vehicle and traffic citations issued to the plaintiff in the Town of Bergen and subsequent dealings with Town of Bergen Court personnel including Town Justice Donald Kunego and Town Justice Robert Swapcienski.
5. The pro-se plaintiff has a history of filing frivolous and countless numbers of motions in other federal court matters. Plaintiff is currently in the middle of a law suit he

brought against the City of Rochester, docket number 6:07-cv-06541-CJS-JWF. In that action, there have been at least 118 documents filed with the court.

6. By way of a rough estimate, the pro-se plaintiff has filed over 20 motions in the City of Rochester case. The motions are for, recusal, miscellaneous relief and multiple requests for extensions, just to name a few.
7. There is a pattern to Mr. Wik's conduct that he seems ready to continue with in the case at bar.
8. By way of background, the plaintiff has already testified that he does not possess a New York State driver's license. After being issued a vehicle and traffic citation while operating a motor vehicle in the Town of Bergen, the pro-se plaintiff has challenged the validity of Judge Ronald Kunego's position on the bench.
9. The pro-se plaintiff is extremely difficult to deal with. At his §50-h Hearing pursuant to the General Municipal Law, Mr. Wik would not answer the most routine questions. For example, Mr. Wik was asked the following questions and gave the following answers:  

Q. Where do you reside?

A. Please define the word "reside".

Q. Where do you live?

A. Please define the word "live".

(Copies of pertinent pages of Mr. Wik's 50-h transcript are attached hereto as **Exhibit "A"**.)
10. The 50-h Hearing lasted 3 hours and 15 minutes because Mr. Wik responded to questions with questions of his own. He also invoked his right not to testify against himself when he was asked if he was "employed", whether he filed income tax

returns or whether he ever possessed any United States currency.

11. Based on my limited dealings with the plaintiff and my conversations with attorneys representing the City of Rochester as mentioned above, I have a good faith basis to believe that his request for subpoenas and enlargement of depositions is designed to harass and burden persons not associated with this law suit. It may also be a delay tactic or fishing expedition.

12. At the very least, based on the limited discovery conducted at this point, plaintiff's instant motion should be denied as being premature. This is especially true in light of plaintiff's failure to disclose and/or articulate how the sought-after information is necessary in the prosecution of his claim.

WHEREFORE it is respectfully submitted that the plaintiff's motion for "SUBPOENA/ENLARGEMENT OF DEPOSTIONS" should be denied in its entirety.

DATED: Buffalo, New York  
October 12, 2011

LIPPMAN O'CONNOR

By: /s/ Robert H. Flynn, Esq.  
Robert H. Flynn, Esq.  
*Attorneys for Defendants,*  
*Donald R. Kunego in his personal and*  
*individual capacity*  
300 Olympic Towers  
300 Pearl Street  
Buffalo, New York  
(716) 854-4705  
Robert.Flynn@Selective.com

**CERTIFICATE OF SERVICE**

I hereby certify that on October 13, 2011 I electronically filed the foregoing Affirmation in Opposition with the Clerk of the District Court using its CM/ECF system which would then electronically notify the following DM/ECF participants on this case and *via United States Mail*:

*Plaintiff:*

Daniel J. Wik  
*Pro Se Plaintiff*  
c/o non-domestic  
659 Averill Avenue  
Rochester, NY 14416

/s/ Robert H. Flynn  
Robert H. Flynn